

COASTAL CONSERVANCY

Staff Recommendation
November 6, 2008

MCNAMARA DAIRY

File No. 04-047-02
Project Manager: Michael Bowen

RECOMMENDED ACTION: Reauthorization to disburse up to \$770,000 to the Northcoast Regional Land Trust to acquire the 77-acre McNamara Dairy in Orick, California.

LOCATION: Orick, Humboldt County, California

PROGRAM CATEGORY: Resource Enhancement and Agricultural Preservation

EXHIBITS

Exhibit 1: [Project Location and Site Map](#)

Exhibit 2: [June 30, 2004 Staff Recommendation](#)

Exhibit 3: [Project Letters](#)

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31150 – 31156 and 31251– 31270 of the Public Resources Code:

“The State Coastal Conservancy hereby amends its prior authorization of June 30, 2004 by authorizing the disbursement of an amount not to exceed \$770,000 (seven hundred seventy thousand dollars) to the Northcoast Regional Land Trust to acquire the approximately 77-acre McNamara Dairy, Humboldt County Assessors Parcel Numbers 520-191-021, 520-201-009, and 520-211-006, as shown on Exhibit 1 to the accompanying staff recommendation, subject to the following conditions:

1. Prior to the disbursement of any Conservancy funds for the acquisition, the Northcoast Regional Land Trust shall submit for the review and approval of the Executive Officer of the Conservancy:
 - a. All relevant acquisition documents, including, without limitation, the appraisal, purchase agreement, escrow instructions, environmental or hazardous materials assessment and title report(s).
 - b. Evidence that sufficient funds are available to complete the acquisitions.
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2. The Northcoast Regional Land Trust shall pay no more than fair market value for the property, as established in an appraisal approved by the Executive Officer.
3. The Northcoast Regional Land Trust shall permanently dedicate the property for habitat preservation, open space protection, public access and agricultural use through an irrevocable offer to dedicate the property or other instrument approved by the Executive Officer of the Conservancy.
4. Any revenue generated from the agricultural uses on the property will only be used to manage and maintain the property consistent with the acquisition purposes or to enhance habitat at the adjacent Redwood Creek estuary.
5. Conservancy funding shall be acknowledged by erecting and maintaining a sign on the property the design and location of which has been reviewed and approved by the Executive Officer.”

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project and acquisition are consistent with the current Project Selection Criteria and Guidelines.
2. The proposed authorization is consistent with the purposes and objectives of Chapter 4 (Sections 31150-31156) of Division 21 of the Public Resources Code, regarding the preservation of agricultural land.
3. The proposed authorization is consistent with the purposes and objectives of Chapter 6 (Sections 31251-31270) of Division 21 of the Public Resources Code, regarding the enhancement of coastal resources. The Redwood Creek estuary adjacent to the property is identified in the Humboldt County North Coast Area Plan of the Humboldt County Local Coastal Program as an area in need of resource enhancement.
4. The Northcoast Regional Land Trust is a non-profit organization existing under section 501(c) (3) of the Internal Revenue Service code whose purposes are consistent with Division 21 of the Public Resources Code.”

PROJECT SUMMARY:

Staff recommends that the Conservancy reauthorize the disbursement of up to \$770,000 to the Northcoast Regional Land Trust (“NRLT”) to acquire the 77-acre McNamara Dairy in Orick, California. The purposes of the acquisition include habitat preservation, open space protection, public access and agricultural use.

In 2004, the Conservancy authorized funding for the acquisition of the entire McNamara Dairy property, including adjacent home-sites and parcels. Unfortunately, the NRLT was unable to come to acceptable terms with the landowner, and the grant agreement was never executed. The NRLT, in conjunction with Western Rivers Conservancy, has now developed a project area that is acceptable to the landowner. The new area excludes the residentially-developed portion of the McNamara dairy resulting in cost saving for the project and protection of the lands most valuable for habitat restoration and open space purposes, as well as continued agricultural production.

Therefore, NRLT has returned to the Conservancy for reconsideration of the newly-defined project area, excluding developed home sites.

Consistent with the prior authorization, NRLT's goals for purchasing the property are two-fold: 1) to preserve the McNamara Dairy as productive, coastal agricultural property, and 2) to promote lower Redwood Creek estuary enhancement opportunities. The NRLT seeks to acquire fee simple title for the McNamara Dairy in order to place restrictions on the properties that would prevent future development, loss of agricultural productivity, and curtailment of access for environmental enhancement of the estuary. NRLT plans to lease the property as a whole to a party interested in maintaining agricultural operations at the site consistent with the environmental goals of the acquisition.

At present, the best agricultural use of either property is for continued use as grazing pasture to support a local dairy or ranch operation. The NRLT's proposed restrictions on the property would protect and enhance existing wildlife resources, and establish agricultural practices that are compatible with the protection and enhancement of wildlife on the property. These restrictions would take the form of an offer to dedicate title in fee, or similar instrument, held by the Coastal Conservancy and consistent with Section 31116(b) of the Public Resources Code.

Recent acquisitions and subsequent management of properties in Humboldt County suggest that lease revenue for agricultural property is predictable and sufficient to provide organizations like the NRLT with a stream of revenue that can be used for property upkeep, and contribute to future enhancement efforts. Based upon reviews of area property appraisals and current market rates, Conservancy staff estimates that income generated from the property is approximately \$10,000 to \$14,000 annually. This income assumes full leasing of 77 acres of grazing land, dairy barns and appurtenant structures. Income generated from the property will be used for property maintenance, management and taxes. Any additional income generated will be used for future enhancement efforts associated with restoring the neighboring Redwood Creek estuary. NRLT has several capable and knowledgeable directors and staff members to manage the property. As a private agricultural landowner in the Orick Valley, NRLT hopes to garner community support for future estuarine enhancement while preserving the area's agricultural integrity, a key concern of local landowners and County officials.

The Conservancy has worked extensively with the County of Humboldt, Redwood National and State Parks, NOAA Fisheries, the California Department of Fish and Game, and others to seek ways to protect and enhance the Redwood Creek estuary, a biologically important estuary that was badly degraded due to the construction of a flood control system by the Army Corps of Engineers in 1968 and land uses in the watershed. The proposed acquisition is the first and most essential step for developing an estuary enhancement project.

Site Description: The entire McNamara property is a 108-acre dairy operation located in northern Humboldt County's coastal zone, near Orick, a small community situated on Redwood Creek near its confluence with the Pacific Ocean. The property, abutting the north side of the creek, includes four parcels containing two homes and four barns. The proposed acquisition, the McNamara Dairy, is limited to the 77 acres of pasture, the barns and dairy buildings south of Hufford Road (Exhibit 1).

Redwood Creek drains a narrow 178,000-acre watershed in northern Humboldt County. The downstream portion of the watershed, including land adjacent to the Dairy, is within the boundaries of the Redwood National and State Parks. Once aboriginal lands of the Yurok people, the Orick valley was settled by Euro-Americans in 1850. Since that time, dairy ranching has been a mainstay of the Orick Valley, and the McNamara Dairy has been one of the most productive dairies in the area. The dairy industry of Orick was and remains supplemented by a logging industry that increased in economic importance following World War II. Some economic benefits have derived from the establishment of the Redwood National and State Parks, though not nearly as much as had been anticipated at the time of the designation of park boundaries. The Park Regional Administration Center and Visitor Center are located in Orick.

Project History: The McNamara Dairy is centrally located within the Redwood Creek Federal Flood Control Project. Completed in 1968 by the United States Army Corps of Engineers in response to the historic 1964 floods, and over the protests of the United States Fish and Wildlife Service and the California Department of Fish and Game, the Redwood Creek Federal Flood Control Project drastically modified and denigrated the creek's highly productive estuary. Annual runs of salmon, estimated by the United States Fish and Wildlife Service at nearly 20,000 (5,000 chinook, 2,000 coho, 10,000 steelhead) declined abruptly following project completion, and have never recovered. Once completed, the flood control project, and necessary maintenance, was turned over to Humboldt County.

To exacerbate already degraded habitat conditions, the logging heyday of the 1950s-1980s caused massive amounts of silt and gravel to wash down hillsides into the channel. As the channel filled in, the flood control project's ability to carry flood flows diminished. Increased maintenance in the form of gravel extraction and willow removal from the riparian zone was needed to maintain flood protection, but such efforts grew more difficult to conduct over time.

Like many flood control projects of this period, the Redwood Creek Project was built to specifications incompatible with the survival of wildlife resources, and inconsistent with current regulatory standards. According to the County, "these levees are the casualty of an irreconcilable conflict between (1) federal policies for flood protection, and (2) federal/state laws and regulations for endangered species and habitat protection." (3/24/08, County of Humboldt). Needless to say, contemporary requests to maintain the project to the standards of an earlier time meet with little success, and habitat improvement stalls. The surreal nature of the conflict was highlighted at several points when the Readiness Branch of the Army Corps ordered the County to maintain the project while, simultaneously, the Regulatory Branch prohibited them from doing so. Thus, the estuary was lost as an ecologically valuable part of the Redwood Creek system, while the contribution of the flood control system diminished over time.

For decades, salmon restoration proponents have sought restoration of the Redwood Creek estuary in general, and modification of the levee system in particular. Department of Fish and Game staff has written that "(t)he "present condition of the estuary/lagoon is considered a major limiting factor to the production of anadromous salmonids of the Redwood Creek basin." DFG further states, "(re)storation efforts that move conditions and processes of the Redwood Creek estuary towards historic status should receive high ecosystem priority" (2004, Recovery Strategy for California Coho Salmon, DFG). Estuary Restoration proponents have long recognized that easements or ownership of property adjacent to the flood control project would be necessary to

achieve habitat restoration, and that continued flood protection must be incorporated into any enhancement plan. While awaiting opportunities for land acquisition in the floodplain, the Conservancy funded an examination of estuary enhancement and setback levee opportunities in 2003. Local resistance to project modifications ran strong. With few opportunities to affect change, and no property available at that time there seemed little hope for resolving the impasse.

Cognizant of the critical location of the property along the Redwood Creek system, and concerned about the development potential of the property, the NRLT contacted Mr. McNamara and expressed a desire to purchase his entire dairy (approximately 108 acres). The NRLT met with Mr. McNamara and his realtor in early 2004 to discuss the sale of the property. Following that meeting, the NRLT expressed its desire to submit a letter of intent to purchase the dairy. NRLT made the offer contingent upon the results of an appraisal.

The NRLT contacted Conservancy staff and other funding sources to ensure that adequate funding would be available for the acquisition. NRLT secured commitment of funding from a variety of sources to assist with this acquisition. The Conservancy board authorized \$627,000 in funding for the project in 2004 (Exhibit 2). Dissatisfied with the results of the appraisal, Mr. McNamara opted to withdraw from the negotiations, and retain his property; the Conservancy never executed a grant agreement with NRLT, and the authorized funds were never disbursed.

In 2006, the Western Rivers Conservancy (“WRC”), a nonprofit organization, approached Mr. McNamara and began a lengthy dialogue, culminating in a negotiation over purchase terms for a smaller portion of the property. WRC entered into a purchase and sale agreement in April 2008, and is prepared to purchase the property and sell it to the NRLT. The new purchase and sale agreement is limited to the agriculturally productive and environmentally-valuable 77-acres of pasture and dairy structures south of Hufford Road, and separated by that road from the McNamara’s homes.

Staff therefore recommends reauthorizing the use of funds to acquire a portion of the McNamara Dairy in order to protect the agricultural and habitat values of the McNamara Dairy. The acquisition will protect open space while facilitating future estuary enhancement projects.

The NRLT has completed several transactions with the support of the Conservancy and is a reliable agent in assisting the Conservancy with its parallel goals of protecting agriculture in the coastal zone, while restoring the Redwood Creek estuary. NRLT has demonstrated its ability to balance agriculture with restoration opportunities at Freshwater Farms, a similar though smaller project funded by the Conservancy, and located near the City of Eureka.

PROJECT FINANCING:

Coastal Conservancy	\$770,000
Total Project Cost	\$770,000

Funding for the proposed project is expected to come from the Conservancy’s FY 2008/09 appropriation from the Habitat Conservation Fund ((under the “California Wildlife Protection

Act of 1990” – Proposition 117). The Conservancy is authorized to use Habitat Conservation Fund monies for the acquisition, restoration, or enhancement of riparian habitat. (Fish & Game Code 2786(f)). As required by the Habitat Conservation Fund, it is contemplated that access will be provided to the extent that it does not interfere with habitat protections developed on the properties.

The 2008/09 appropriation to the Conservancy from the Habitat Conservation Fund was, in turn, derived from the “Disaster Preparedness and Flood Prevention Bond Act of 2006” (Proposition 1E), which may be used by the Conservancy to acquire real property to protect or enhance flood protection corridors while preserving or enhancing the wildlife value of the property or real property that cannot reasonably be made safe from future flooding. (Pub. Res. Code § 5096.825) As discussed in the Project History Section, this property is part of a flood protection corridor established by the Corps in the 1960's that can be better utilized as wildlife areas with continued agricultural use as historically practiced.

Although no lease revenue will revert to the Conservancy, the Conservancy will, through the terms of its grant agreement and encumbrance, ensure that all revenue that is derived from the property will be used for property maintenance, and environmental enhancement consistent with the acquisition purposes. NRLT is a small local land trust, and as such, does not have funds of its own to commit towards the purchase of the property. Though the project has the strong support of other resource agencies, due to timing constraints there are no matching funds available for the acquisition. It is anticipated that when restoration projects are developed for the site, multiple agencies will provide financial contributions to implementing those projects.

CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:

The proposed project is undertaken pursuant to Chapter 4 of Division 21 Sections 31150-31156 and Chapter 6 of Division 21, Sections 31251-31270 of the Public Resources Code, as follows:

Pursuant to Section 31156, the Conservancy may award grants to non-profit organizations for the purpose of acquiring fee title in land located in the coastal zone in order to prevent loss of agricultural land to other uses and to assemble agricultural lands into parcels of adequate size permitting continued agricultural production. Consistent with this section, the proposed project provides funds to the NRLT to acquire fee simple title for the McNamara Dairy, consolidate parcels to prevent future development and loss of agricultural potential, and to work to develop a lease to a party interested in maintaining agricultural operations at the site.

Pursuant to Section 31251, the Conservancy may award grants to non-profit organizations for the purpose of enhancement of coastal resources that, because of human-induced events, or incompatible land uses, have suffered loss of natural and scenic values. Consistent with this section, the NRLT proposes to permanently dedicate the property for the protection and enhancement of existing wildlife resources, and to maintain agricultural practices on the property compatible with the protection and enhancement of wildlife on the property.

Pursuant to Section 31252, all areas proposed for resource enhancement should be identified in an LCP as requiring public action to resolve existing or potential resource problems. The Redwood Creek estuary is identified in the Humboldt County North Coast Area Plan of the

Humboldt County Local Coastal Program as an area in need of resource enhancement (LCP 3-24).

Finally, pursuant to Section 31253, “(the) Conservancy may provide up to the total of the cost of any coastal resource enhancement project...” and the amount of the Conservancy contribution shall be determined only after an assessment of funding generally available and other factors. The proposed contribution by the Conservancy was determined based on application of priority criteria and after taking into account other available resources and the matching contributions to the project by other funding sources. As further acquisition or enhancement opportunities arise, staff intends to seek funding from a variety of state and federal sources, including the Wildlife Conservation Board and the United States Fish and Wildlife Service.

**CONSISTENCY WITH CONSERVANCY’S 2007
STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 4, Objective A** of the Conservancy’s 2007 Strategic Plan, the proposed project will acquire 77 acres of significant coastal and watershed resource property that provides a unique opportunity for estuary restoration in a once-productive salmon stream.

Consistent with **Goal 7, Objective A** of the Conservancy’s 2007 Strategic Plan, the proposed project will acquire 77 acres of working lands within a strategic property abutting Redwood Creek, thereby protecting the agricultural character of the Orick Valley, and ensuring the opportunity for future estuary restoration along lower Redwood Creek. The McNamara Dairy (77-acres) is consistent with Goal 7, Objective A.

Consistent with **Goal 8, Objective A** of the Conservancy’s 2007 Strategic Plan, the proposed project will help to resolve a significant land-use conflict stemming from the competing objectives of maintaining the historic levee and protecting and enhancing coastal salmon populations listed as threatened under the federal Endangered Species Act.

**CONSISTENCY WITH CONSERVANCY’S
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy’s Project Selection Criteria and Guidelines, last updated on September 20, 2007, in the following respects:

Required Criteria

1. **Promotion of the Conservancy’s statutory programs and purposes:** See the “Consistency with Conservancy’s Enabling Legislation” section above.
2. **Consistency with purposes of the funding source:** See the “Project Financing” section above.
3. **Support of the public:** As demonstrated in this staff recommendation, and in the June 30, 2004 staff recommendation, supporters of this project include the California Department of Fish and Game, the United States Fish and Wildlife Service, the National Marine Fisheries

Service, California Trout, Inc. the Smith River Alliance, Redwood National and State Parks,, and others. Earlier and current letters of support are included in Exhibit 3.

4. **Location:** The proposed project is located within the coastal zone of Humboldt County, near the community of Orick.
5. **Need:** Without the Conservancy's substantial financial contribution, the purchase and sale agreement will not be executed, the earnest money now in escrow will return to the current owners, and the property may or may not be available for sale at fair market value in the future. Unavailability of the property precludes either improved flood management efforts or estuary enhancement efforts.
6. **Greater-than-local interest:** The State Coho Recovery Plan of 2004 specifically highlights the improvement of the Redwood Creek estuary as a "highest level task" that is "critical to coho salmon recovery." (Coho Plan 9.51) If the citizens of California truly wish to recover Coastal Salmon populations, then few opportunities provide as much cause for hope as the restoration of the Redwood Creek estuary. Only fee or easement interest purchases of properties adjacent to lower Redwood Creek are likely to make this effort feasible.

Additional Criteria

7. **Urgency:** In many decades few opportunities to acquire property in the Orick Valley have arisen, and few are likely to arise in the future. Furthermore, on March 18, 2008, the Army Corps of Engineers placed the Redwood Creek Flood Control Project on "inactive status" within the Rehabilitation Implementation Program (RIP), thereby triggering a likely sequence of events that are unfavorable to the County and the community of Orick. These events are likely to include a re-mapping of the Orick valley by the Federal Emergency Management Agency (FEMA).
8. **Resolution of more than one issue:** As explained earlier and in the June 30, 2004 staff recommendation, the County of Humboldt faces a dilemma: they are required to maintain the Redwood Creek Project for flood control purposes, but they are effectively prohibited from doing so due to regulatory constraints. Furthermore, they are liable for damages resulting from any flooding that does occur. Developing alternative management systems for the project, such as setback levees, floodway easements, and so forth, would resolve flood control concerns, while improving habitat in an important river.
9. **Leverage:** See the "Project Financing" section above.
10. **Conflict resolution:** For far too many years the community of Orick has suffered the threat of flooding resulting from an inadequately maintained flood control feature. Similarly, the natural resources of Redwood Creek have suffered from the results of that feature, and those who would restore those resources have been at odds with the community. Alternative management approaches to the flood control project are needed, and acquisition of this property will help facilitate such approaches.
11. **Innovation:** Often sought, levee setback projects are usually constrained by costly development in the flood plain. The Orick Valley is unusual in the sense that little development exists in the floodplain. Thus, this acquisition will help promote an unusual but desirable approach to estuary restoration. Furthermore, this acquisition will enable the NRLT

to pursue this habitat enhancement in a fashion that is compatible with protecting and maintaining the agricultural value of the properties.

12. **Readiness:** NRLT has demonstrated their readiness and willingness to complete this acquisition and prepare for property management in a timely fashion.
13. **Realization of prior Conservancy goals:** See “Project History” above.
14. **Return to Conservancy:** See the “Project Financing” section above.
15. **Cooperation:** Agency officials, community members, and others have all expressed support for this acquisition, and a willingness to cooperate with the grantee in accomplishing this project.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

The project area is within the Coastal Zone of Humboldt County. The North Coast Area Plan of the Humboldt County Local Coastal Program includes specific provisions applicable to the proposed project area. These, as well as germane provisions of the Coastal Act, are treated in detail in the June 30, 2004 staff recommendation (Exhibit 2) and apply equally to both properties to be acquired.

COMPLIANCE WITH CEQA:

Acquisition of the McNamara Dairy is categorically exempt from the requirements of the California Environmental Quality Act (“CEQA”) under 14 California Code of Regulations Section 15325 because it involves the transfer of an interest in land to preserve open space and plant and animal habitat; to allow continued agricultural use; and to facilitate restoration of natural conditions. Staff will file a Notice of Exemption upon approval of the project.